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No. 98-864

IN THE

# Supreme Court of the United States

**OCTOBER TERM, 1998**

ESTOCK CORPORATION, N.V. AND
LOUIS A. MORVITZ, AS TRUSTEE,
*Petitioners,*

v.

FIRST NATIONAL BANK OF CHICAGO,
*Respondent.*

**On Petition for Writ Of Certiorari to the United States Court Of Appeals For The Seventh Circuit**

## MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA IN SUPPORT OF THE PETITIONERS

MARK S. MANDELL, ESQ.
1050 31st St., N.W.
Washington, DC 20007
(202) 965-3500
*President, The Association of Trial Lawyers of America*

JEFFREY ROBERT WHITE, ESQ.*
1050 31st. St., N.W.
Washington, DC 20007
(202) 965-3500
*Attorney for Amicus Curiae*
**Counsel of Record*

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## MOTION OF ASSOCIATION OF TRIAL LAWYERS OF AMERICA FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF THE PETITION

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Pursuant to Rule 37.2 of the Rules of this Court, the Association of Trial Lawyers of America ("ATLA") respectfully moves this Court for leave to file the accompanying brief as amicus curiae in support of the petition for a writ of certiorari. Petitioner has granted consent to the filing of this brief. Respondent, through counsel, has denied consent.

ATLA is a national voluntary bar association whose approximately 50,000 members primarily represent plaintiffs

in personal injury suits, civil rights and employment discrimination actions, and commercial litigation.

This case is of great importance to ATLA, its members and their clients. The Seventh Amendment protects the right of litigants in federal courts to have their cases decided by a cross-section of the community sitting as a civil jury. It also guarantees that jury determinations of facts will not be reassessed by federal judges.

Justice Story rightly called this second clause of the Seventh Amendment the "more important." *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 447 (1830). Certainly the right to trial by jury rings hollow if federal judges may re-examine the jury's factual findings according to their own view of the evidence. For that reason, the drafters of the Bill of Rights included an explicit prohibition -- the Re-examination Clause -- within the Seventh Amendment. In ATLA's view, the lower court's reversal of the jury's verdict in this case violated that constitutional prohibition.

ATLA believes that its brief as amicus curiae will assist this Court in its disposition of the Petition for a Writ of Certiorari. The Court's decision will affect numerous litigants in federal courts involved in virtually every area of law. In addition, nearly every state constitution guarantees the right to trial by jury, and state courts look to this Court for guidance in applying and preserving that right. *See Supinger v. Stakes*, ___ Va. ___, 495 S.E.2d 813 (1998), in which the Virginia Supreme Court relied heavily on this Court's decision in *Dimick v. Schiedt*, 293 U.S. 474 (1935), in holding that additur violates the right to jury trial.

ATLA has participated as amicus curiae in many significant cases before this Court concerning the preservation of Seventh Amendment guarantees. ATLA believes that its nationwide perspective and extensive research into the historical roots of the Seventh Amendment may provide assistance to the Court that extends beyond the immediate concerns of the parties.

For these reasons, the Association of Trial Lawyers of America respectfully requests that the Court grant its motion for leave to file the accompanying brief in this case as amicus curiae.

Respectfully submitted,

Jeffrey R. White

Association of Trial Lawyers
of America
1050 31st Street, N.W.
Washington, D.C. 20007
(202) 965-3500
Attorney for Amicus Curiae

December 22, 1998

No. 98-864

IN THE

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## BRIEF OF THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA IN SUPPORT OF THE PETITIONERS


MARK S. MANDELL, ESQ.
1050 31st St., N.W.
Washington, DC 20007
(202) 965-3500
*President, The Association of Trial Lawyers of America*

JEFFREY ROBERT WHITE, ESQ.*
1050 31st. St., N.W.
Washington, DC 20007
(202) 965-3500
*Attorney for Amicus Curiae*
**Counsel of Record*

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**On Petition for Writ Of Certiorari to the United States Court Of Appeals For The Seventh Circuit**

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## BRIEF OF ASSOCIATION OF TRIAL LAWYERS OF AMERICA AS AMICUS CURIAE IN SUPPORT OF THE PETITION

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## IDENTITY AND INTEREST OF AMICUS CURIAE

ATLA is a national voluntary bar association whose approximately 50,000 members primarily represent plaintiffs in personal injury suits, civil rights and employment discrimination actions, and commercial litigation.[1] A motion

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[1] Pursuant to Rule 37.6, Amicus discloses that no counsel for a party authored any part of this brief, nor did any person or entity other than amicus curiae, its members, or its counsel make a monetary contribution to the preparation or submission of this brief.

for leave to file this brief has been filed with the Clerk of this Court.

This case is of great importance to ATLA, its members and their clients. The Seventh Amendment protects the right of litigants in federal courts to have their cases decided by a cross-section of the community sitting as a civil jury. It also guarantees that jury determinations of facts may not be re-examined by federal judges.

ATLA believes that vigorous enforcement of the Re-examination Clause is vitally important to preservation of the right to trial by jury for the clients of ATLA members and all litigants in federal courts.

ATLA submits this brief to illustrate the historical constitutional significance of the issues raised in the Petition and the importance of this Court's decision to numerous Americans whose right to trial by jury of their legal claims is at stake.

## REASONS FOR GRANTING THE WRIT

### I. RIGHT TO TRIAL BY JURY GUARANTEED BY THE SEVENTH AMENDMENT IS OF FUNDAMENTAL IMPORTANCE AND SHOULD BE VIGOROUSLY PRESERVED.

The Question Presented by the Petitioner in this case involves one of the most fundamental aspects of the justice system in the United States: The division of responsibility between the court and the jury.

The fundamental importance of the civil jury in America is evident from history. One of the most deeply entrenched principles of the common law has been that the assessment of damages in unliquidated claims is the responsibility of the jury. 3 William Blackstone, Commentaries *397. Yet the American colonists faced repeated attempts by the British government to take the adjudication of cases out of the hands of juries in favor of judges beholded to the Crown. Roscoe

Pound, THE DEVELOPMENT OF CONSTITUTIONAL GUARANTEES OF LIBERTY 69-72 (1957). The colonists complained bitterly of this infringement through the Stamp Act Congress, the Continental Congress, and, finally, in the Declaration of Independence. See Stephan Landsman, *The Civil Jury In America: Scenes From an Unappreciated History*, 44 Hastings L.J. 579, 595-97 (1993).

The absence of an express guarantee of the right to jury trial in civil actions nearly scuttled the proposed Constitution. Only the commitment to add a Bill of Rights containing such a guarantee finally assured ratification. Edith Guild Henderson, *The Background of the Seventh Amendment*, 80 Harv. L. Rev. 289, 295-98 (1966); Charles W. Wolfram, *The Constitutional History of the Seventh Amendment*, 57 Minn. L. Rev. 639, 667-730 (1973)(extensive review of ratification debates). As Justice Story relates, "this right was secured by the seventh amendment of the Constitution proposed by Congress, and which received an assent of the people so general as to establish its importance as a fundamental guaranty of the rights and liberties of the people. *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 446 (1830).

Mindful of this history, this Supreme Court has consistently emphasized the fundamental nature of the right to jury trials:

> Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.

*Dimick v. Schiedt*, 293 U.S. 474, 486 (1935), quoted in *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 501 (1959); and in *Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 564 (1990). Consequently, the Court has emphasized, "The right of jury trial in civil cases at common law . . . should be jealously guarded by the courts" *Jacob v. New York*, 315 U.S. 752, 753 (1943). *See also, Lyon*

*v. Mutual Benefit Assoc.*, 305 U.S. 484, 492 (1939) ("It is essential that the right to trial by jury be scrupulously safeguarded").

## II. THIS COURT HAS PROPERLY AND VIGOROUSLY ENFORCED THE SEVENTH AMENDMENT PROHIBITION AGAINST RE-EXAMINATION OF JURY FINDINGS.

Certainly the right to trial by jury rings hollow if federal judges may re-examine the jury's factual findings according to their own view of the evidence. For that reason, the drafters of the Bill of Rights included an explicit prohibition -- the Re-examination Clause -- within the Seventh Amendment. Justice Story rightly called this second clause of the Seventh Amendment the "more important." *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 447 (1830).

Historically, this Court has granted review in numerous cases to reinstate civil jury verdicts that had been overturned by federal appellate courts. Eric Schnapper, *Judges Against Juries -- Appellate Review of Federal Civil Jury Verdicts*, 1989 Wis. L. Rev. 237, 238. The hallmark of this Court's enforcement of the Re-examination Clause was deference to the jury's conclusions based on the evidence. A jury verdict must be upheld, this Court stated, unless there was "a complete absence of probative facts to support the conclusion reached." *Lavendar v. Kurn*, 327 U.S. 645, 653 (1946).

In the 1970's and 1980's, the Court granted review in relatively few such cases. During that period, in the absence of strong guidance from this Court, there occurred a noticeable increase in the number of lower federal court decisions overturning jury verdicts on the basis of sufficiency of evidence, few of which even referred to the Seventh Amendment. Schnapper, *supra* at 246-253.

More recently, however, this Court has against recognized the fundamental importance of the jury rights

protected by the Seventh Amendment. In *Feltner v. Columbia Pictures Television*, ___ U.S. ___, 118 S. Ct. 1279, 1297 (1998), the Court re-emphasized that the "right to a jury trial includes the right to have a jury determine the amount of statutory damages, if any, awarded to the copyright owner."

The Court has also recently underscored the restrictions imposed by the Seventh Amendment on appellate review of damages awards. In *Hetzel v. Prince William County*, ___ U.S. ___, 118 S. Ct. 1210 (1998), a discrimination case under Title VII and §1983, the Court held that, even where the court determined that the amount of damages was grossly excessive, the Seventh Amendment prohibits the court from substituting its own assessment of the appropriate damages, and requires that the party be given the option of a new trial.

The decision by the court of appeals in this case is a stark example of the re-examination of jury factual findings that the drafters of the Seventh Amendment sought to protect against. The court's opinion does not base its decision on legal error in the admission or exclusion of evidence, on improper or prejudicial argument, or on erroneous instructions by the trial judge. The court's decision simply amounts to re-examining the jury's findings and substituting its own view of economic rationality.

The decision below clearly conflicts with decisions by this Court and every Circuit court. See Petition at 13-14. To deny the Petition in this case will spur disappointed litigants in a broad range of cases to retry the facts in the appellate courts and give a green light to further erosion of the Seventh Amendment.

## CONCLUSION

For the forgoing reasons, Amicus urges this Court to grant the Petition for a Writ of Certiorari.

Respectfully submitted,

Jeffrey R. White

Association of Trial Lawyers
of America
1050 31st Street, N.W.
Washington, D.C. 20007
(202) 965-3500
Attorney for Amicus Curiae

December 22, 1998